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2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

MAJORITY (202) 225-2927
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Opening Statement of Rep. Henry A. Waxman Chairman, Committee on Energy and Commerce Secrecy in the Response to Bayer's Fatal Chemical Plant Explosion Subcommittee on Oversight and Investigations: April 21, 2009

Today's hearing is important not only for the residents of West Virginia, but for people across the country who live near chemical plants and may be concerned about their safety.

This morning I would like to do two things. First, I would like to provide some historical context for today's hearing. Second, I would like to describe some of the specific findings of the Committee's investigation into the Bayer explosion.

I have been working on issues relating to chemical security for several decades. On December 14, 1984, when I was chair of this Committee's health subcommittee, we held a field hearing in West Virginia to examine the safety record of the very same plant we are discussing today.

Back then, this plant was owned by Union Carbide. We called that hearing because earlier that month, the company's sister plant in Bhopal, India, released 25 to 45 tons of an extremely toxic chemical called methyl isocyanate (MIC), killing approximately 4,000 people and injuring tens of thousands of others. We wanted to make sure we never had a similar incident here.

As a result of the Committee's work on this issue, we passed legislation in 1990 to create the Chemical Safety and Hazard Investigation Board. Congress gave the Board broad investigative powers, authorized it to identify "measures to reduce the likelihood or the consequences of accidental releases," and charged it with recommending ways to make "chemical production, processing, handling and storage as safe and free from risk of injury as is possible."

The Board is investigating the recent Bayer explosion, and we are pleased to have Chairman John Bresland with us today to present his preliminary findings.

In my opinion, the most significant problem we face today is that we are examining the same chemical plant in West Virginia, although it is now owned by Bayer, and the same toxic chemical, MIC.

Although other chemical companies, like DuPont, have invested in safer technologies to eliminate their MIC stockpiles, Bayer's facility in West Virginia is the only site in the United States that continues to produce and store large amounts of MIC.

Twenty-five years after the catastrophe in India, I think it's finally time to ask whether it makes sense to allow Bayer to continue producing and storing such massive amounts of this highly toxic chemical.

I know the Chemical Safety Board is considering how to address this issue, so I want to make absolutely clear that Congress will look to the Board for specific and concrete recommendations on how Bayer can reduce its MIC stockpile and change its procedures to inherently safer technologies. This is not an easy task, but it is essential, and its time has come.

Now let me turn to the findings of our investigation. We have a detailed memo here that was compiled by Committee staff, and it sets forth the results of our investigation.

The Committee reviewed more than 200,000 pages of documents, as well as audio and video recordings, obtained from Bayer, the Coast Guard, the Environmental Protection Agency, and the Chemical Safety Board. Committee staff also inspected Bayer's plant in West Virginia and interviewed more than 20 Bayer employees, first responders, elected officials, and concerned residents.

Based on this evidence, our overall conclusion is that Bayer engaged in a campaign of secrecy by withholding critical information from local, county, and state emergency responders; by restricting the use of information provided to federal investigators; by attempting to marginalize news outlets and citizen groups concerned about the dangers posed by Bayer's activities; and by providing inaccurate and misleading information to the public.

We have three specific findings:

- First, on the night of the explosion, Bayer failed to provide emergency responders with critical information about the scope of the explosion, the potential chemical hazards involved, or the actions needed to safeguard the surrounding community.
- Second, there are serious questions about the vulnerabilities of Bayer's inventory of MIC and about MIC monitoring systems that were out of service at the time of the explosion.
- And third, Bayer is now attempting to conceal information about the explosion by invoking, and in some cases misusing, a statute governing maritime transportation security to designate unprecedented amounts of material as "sensitive security information."

The memo goes into greater detail about the evidence that forms the basis for these findings, and I ask unanimous consent that the memo and the documents it refers to be made part of the official hearing record.

Finally, I would like to extend special thanks to the local, county, and state emergency responders and other officials from West Virginia who worked with our staff on this investigation and traveled here today to answer the Committee's questions.